

1 TOMIO B. NARITA (SBN 156576)  
2 JEFFREY A. TOPOR (SBN 195545)  
3 SIMMONDS & NARITA LLP  
4 44 Montgomery Street, Suite 3010  
5 San Francisco, CA 94104-4816  
6 Telephone: (415) 283-1000  
7 Facsimile: (415) 352-2625  
8 [tnarita@snllp.com](mailto:tnarita@snllp.com)  
9 [jtopor@snllp.com](mailto:jtopor@snllp.com)

10 Attorneys for defendants  
11 American Express and  
12 Nationwide Credit, Inc.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16

17 NELLIE PETALVER,

18 Plaintiff,

19 vs.

20 AMERICAN EXPRESS, a  
21 corporation;  
22 NATIONWIDE CREDIT, INC.;  
23 DOES 1 THROUGH 10,

24 Defendants.  
25  
26  
27  
28

CASE NO.: C 08-02718 WHA

**CERTIFICATE OF SERVICE OF  
NOTICE TO ADVERSE PARTY  
OF NOTICE OF REMOVAL**

1 I, Stephanie Schmitt, declare as follows:

2 I am over the age of 18 years and not a party to this action.

3 I am employed by the firm of Simmonds & Narita LLP, counsel of record for  
4 defendants American Express and Nationwide Credit, Inc. My business address is 44  
5 Montgomery Street, Suite 3010, San Francisco, California 94104, which is located in  
6 the city and county where the mailing described below took place.

7 On May 30, 2008, I deposited in the United States Mail at San Francisco,  
8 California, a copy of the Notice to Adverse Party of Removal dated May 30, 2008, a  
9 copy of which is attached to this Certificate, to be delivered to the addresses below:

10 Irving L. Berg  
11 The Berg Law Group  
12 145 Town Center, PMB 493  
13 Corte Madera, CA 94925  
Counsel for Plaintiff

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed in San Francisco on this 30th day of May, 2008.

16  
17  
18  
19 By: \_\_\_\_\_



20 Stephanie Schmitt  
21  
22  
23  
24  
25  
26  
27  
28



1 TOMIO B. NARITA (SBN 156576)  
2 JEFFREY A. TOPOR (SBN 195545)  
3 SIMMONDS & NARITA LLP  
4 44 Montgomery Street, Suite 3010  
5 San Francisco, CA 94104-4816  
6 Telephone: (415) 283-1000  
7 Facsimile: (415) 352-2625  
8 tnarita@snllp.com  
9 jtopor@snllp.com

10 Attorneys for defendants  
11 American Express and  
12 Nationwide Credit, Inc.

13  
14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO  
16 LIMITED CIVIL

17 NELLIE PETALVER,

18 Plaintiff,

19 vs.

20 AMERICAN EXPRESS, a  
21 corporation;  
22 NATIONWIDE CREDIT, INC.;  
23 DOES 1 THROUGH 10,  
24 Defendants.

25 CASE NO.: CGC 08 474546

26 **NOTICE TO ADVERSE PARTY**  
27 **OF REMOVAL**

1 TO PLAINTIFF NELLIE PETALVER AND HER ATTORNEYS OF RECORD:  
2 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed  
3 in the United States District Court for the Northern District of California on May  
4 29, 2008 under Federal Court case number C 08-02718 WHA. A copy of the  
5 Notice of Removal is attached hereto as **Exhibit A** and is served and filed  
6 herewith.  
7

8 DATED: May 30, 2008

SIMMONDS & NARITA LLP  
TOMIO B. NARITA  
JEFFREY A. TOPOR

11 By: 

12 Tomio B. Narita  
13 Attorneys for defendants  
14 American Express and  
15 Nationwide Credit, Inc.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

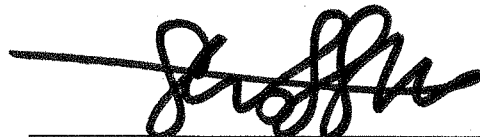
**1) NOTICE TO ADVERSE PARTY OF REMOVAL**

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressees indicated below:

**VIA U.S. MAIL**

Irving L. Berg  
The Berg Law Group  
145 Town Center, PMB 493  
Corte Madera, CA 94925  
Counsel for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at San Francisco, California on this 30th day of May, 2008.



Stephanie Schmitt

Exhibit A

ORIGINAL  
FILED  
08 MAY 29 PM 3:46  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

WHA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CV 08 2718  
CASE NO.:

NELLIE PETALVER,

Plaintiff,

vs.

AMERICAN EXPRESS, a  
corporation;  
NATIONWIDE CREDIT, INC.;  
DOES 1 THROUGH 10,

Defendants.

NOTICE OF REMOVAL

BY FAX



1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendants American Express Corporation  
3 ("Amex") and Nationwide Credit, Inc. ("NCI") hereby remove to this Court the  
4 state court action described below.

5 1. On April 23, 2008, a complaint was filed against Amex and NCI by  
6 plaintiff Nellie Petalver ("Plaintiff") in an action pending in the Superior Court of  
7 the State of California in and for the County of San Francisco, entitled *Nellie*  
8 *Petalver v. American Express et al.*, Case No. CGC 08 474546. A copy of the state  
9 court complaint ("Complaint") is attached hereto as **Exhibit A**.

10 2. This removal petition is timely under 28 U.S.C. § 1446(b) because the  
11 Complaint was served via United States Mail on April 30, 2008 and received by  
12 Amex and NCI thereafter.

13 **JURISDICTION**

14 3. This action is a civil action of which this Court has original  
15 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by  
16 Amex and NCI pursuant to the provisions of 28 U.S.C. § 1441(b) in that the  
17 Complaint asserts federal claims against Amex and NCI allegedly arising under  
18 U.S.C. § 1692 *et seq.* (the Fair Debt Collection Practices Act).

19 **VENUE**

20 4. The Complaint was filed in the Superior Court of the State of  
21 California, County of San Francisco. Therefore, venue in the San Francisco  
22 Division or the Oakland Division of this District is proper. *See* Local Rule 3-2(d)  
23 (stating "all civil actions which arise in the counties of Alameda . . . shall be  
24 assigned to the San Francisco Division or the Oakland Division"); 28 U.S.C. §  
25 1441(a) (providing for removal "to the district court of the United States for the  
26 district and division embracing the place" where the state court action is pending).

27 //

1 5. Amex and NCI are represented by the undersigned.

2  
3 DATED: May 29, 2008

SIMMONDS & NARITA LLP  
TOMIO B. NARITA  
JEFFREY A. TOPOR

4  
5  
6 By: 

7 Tomio B. Narita  
8 Attorneys for defendants  
9 American Express and  
10 Nationwide Credit, Inc.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibit A

1 Irving L. Berg (SBN 36273)  
 2 THE BERG LAW GROUP  
 3 145 Town Center, PMB 493  
 4 Corte Madera, California 94925  
 (415) 924-0742  
 (415) 891-8208 (Fax)  
 irvberg@comcast.net (e-mail)

5 ATTORNEY FOR PLAINTIFF

ASE MANAGEMENT CONFERENCE SET

AUG 22 2008 - 10:00 AM

DEPARTMENT 212

APR 23 2008  
 COURT OF CALIFORNIA  
 OF SAN FRANCISCO

APR 23 2008  
 GORDON PARK-LI, Clerk  
 BY: CRISTINA E. BAUTISTA  
 Deputy Clerk

6  
 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 8 COUNTY OF SAN FRANCISCO  
 9 LIMITED CIVIL

10 NELLIE PETALVER, an individual,  
 11 Plaintiff,

12 v.

13 AMERICAN EXPRESS, a corporation;  
 14 NATIONWIDE CREDIT, INC.; DOES 1  
 THROUGH 10,

15 Defendants.

Case No.:

CGC 08 474546

COMPLAINT SEEKING DAMAGES FOR  
 UNLAWFUL DEBT COLLECTION  
 PRACTICES

DEMAND FOR JURY TRIAL

16 I. INTRODUCTION

17 1. Plaintiff, NELLIE PETALVER ("Ms. Petalver"), is a resident of San Francisco  
 18 County. She brings this lawsuit seeking damages from Defendants AMERICAN EXPRESS  
 19 ("AEX") and NATIONWIDE CREDIT, INC. ("Nationwide"), for their violation of the  
 20 California and Federal laws regulating consumer debt collection practices.

21 2. The Defendants, AEX and Nationwide, are debt collectors as defined at Cal. Civ.  
 22 Code § 1788.2(c), which provides:

23 (c) The term "debt collector" means any person who, in the  
 24 ordinary course of business, regularly, on behalf of himself or  
 25 herself or others, engages in debt collection.

26 3. The Defendant Nationwide is also a debt collector under the federal law, 15  
 U.S.C. § 1692a(6).

27 4. The California law, known as the Rosenthal Fair Debt Collection Practices Act, is  
 28 at Cal. Civ. Code § 1788, *et seq.* The California law incorporates provisions of the federal Fair

COMPLAINT SEEKING DAMAGES

1 Debt Collection Practices Act ("FDCPA"), pursuant to Cal. Civ. Code § 1788.17, which states:

2 ....every debt collector collecting or attempting to collect a  
 3 consumer debt shall comply with the provisions of Sections  
 4 1692b to 1692j.... of Title 15 of the United States Code [i.e., the  
 5 FDCPA].

6 5. Plaintiff, by this action, seeks statutory damages, attorney's fees and costs.

## 7 II. JURISDICTION AND VENUE

8 6. Jurisdiction in this court is conferred by 15 U.S.C. § 1692k(d).

9 7. Venue is proper in this county because Defendants do business in this county, and  
 10 the collection communications were received in this county.

## 11 III. PARTIES

12 8. Plaintiff, Nellie Petalver, is a single woman who resides in San Francisco, CA.

13 9. Defendant AEX has a principal office at 777 American Expressway, Fort  
 14 Lauderdale, FL 33337. AEX is a debt collector as defined at Cal. Civ. Code § 1788.2. AEX is  
 15 amenable to service of process on an officer at its principal office.

16 10. Defendant Nationwide has its principal office at 2015 Vaughn Road NW, Bldg.  
 17 400, Kennesaw, GA 30144 does business as a debt collector as defined by 15 U.S.C. § 1692a(6),  
 18 and as defined by Cal. Civ. Code § 1788.2. Defendant Nationwide is served with legal process  
 19 on an officer at its principal office.

20 11. Plaintiff is ignorant of the true names or capacities of the defendants sued herein  
 21 under the fictitious names of DOE ONE through TEN inclusive.

22 12. Each of the fictitiously named Doe Defendants is responsible in some manner for  
 23 the wrongdoing alleged herein, and is liable for the damages recoverable by Plaintiff. Each of  
 24 the Defendants was acting as agent or employee for the others. Plaintiff will seek leave of the  
 25 court to name the Doe defendants when their true names and identities are ascertained.

26 13. Defendants AEX and Nationwide are hereafter sometimes referred to collectively  
 27 as "Defendants."

## 28 IV. FACTUAL ALLEGATIONS

1           14.     Some time ago, Plaintiff was issued a credit card by Defendant AEX. The last  
2 four digits of the account were 1009.

3           15.     Plaintiff used the account for purchase of consumer goods for Plaintiff's personal  
4 and household needs.

5           16.     Plaintiff was unable to make payment on the account because of financial  
6 setbacks.

7           17.     Plaintiff sought legal representation to help Plaintiff through this bleak financial  
8 period, and to deal with the unrelenting and stressful demands of Plaintiff's creditors and their  
9 collection agents. Plaintiff hired attorney Irving L. Berg for legal representation.

10          18.     Plaintiff was advised by the attorney that, once creditors and their collection  
11 agents were advised of attorney representation, the law required that the creditors and their  
12 collection agents must leave Plaintiff alone and deal with the attorney.

13          19.     On October 24, 2007, Plaintiff's attorney sent Defendant AEX a letter advising of  
14 his representation of Plaintiff. Exhibit A is a copy of the letter. The letter states, among other  
15 things:

16                   **The captioned consumer is a client of mine. All**  
17                   **communications concerning my client's financial affairs,**  
18                   **including the captioned debt, and any other debts you claim**  
                    **owed by my client shall hereafter be made to this office in**  
                    **writing.**

19          20.     Some date thereafter, Defendant AEX appointed Defendant Nationwide as its  
20 agent to collect the alleged debt. AEX transferred and turned over to Defendant Nationwide  
21 Plaintiff's account, including the letter of attorney representation (Exhibit A) and notes of  
22 Defendant AEX's collection action taken against Plaintiff to collect the claim against Plaintiff.

23          21.     On February 1, 2008, Defendant Nationwide, notwithstanding the notice of  
24 attorney representation (Exhibit A), wrote Plaintiff directly, demanding payment of the account.  
25 Exhibit B is a copy of the Nationwide letter. Likewise, Defendant Nationwide wrote Plaintiff on  
26 February 21, 2008. A copy of the letter is attached as Exhibit C.

27          23.     Defendant AEX and its agent, Defendant Nationwide, are liable for sending  
28 collection letters, Exhibits B and C, to Plaintiff after advisement of attorney representation.

1 Defendants' conduct violates Cal. Civ. Code § 1788.14(c), which prohibits:

2 (c) Initiating communications other than statements of  
 3 account, with the debtor with regard to the consumer debt,  
 4 when the debt collector has been previously notified in writing  
 5 by the debtor's attorney that the debtor is represented by such  
 6 attorney with respect to the consumer debt and such notice  
 7 includes the attorney's name and address and a request by  
 8 such attorney that all communications regarding the consumer  
 9 debt be addressed to such attorney, unless the attorney fails to  
 10 answer correspondence, return telephone calls, or discuss the  
 11 obligation in questions.

12 24. Said conduct further violates 15 U.S.C. § 1692c(a)(2), which states a debt  
 13 collector may not communicate with a consumer without the consumer's permission:

14 (2) if the debt collector knows the consumer is represented by an  
 15 attorney with respect to such debt and has knowledge of, or can  
 16 readily ascertain, such attorney's name and address, unless the  
 17 attorney fails to respond within a reasonable period of time to a  
 18 communication from the debt collector or unless the attorney consents  
 19 to direct communication with the consumer....

#### 20 CLAIM FOR RELIEF

21 25. Plaintiff incorporates by reference all of the foregoing paragraphs.

22 26. Defendants AEX and Nationwide violate Cal. Civ. Code § 1788.14(c) and 15  
 23 U.S.C. §§ 1692c(a)(2) and 1692e(3) by communicating with Plaintiff after receiving notice of  
 24 attorney representation.

#### 25 V. PRAYER

26 WHEREFORE, according to the remedies allowable under the California law and Federal  
 27 law, as provided by Cal. Civ. Code § 1788.32:

28 The remedies provided herein are intended to be cumulative and  
 are in addition to any other procedures, rights, or remedies under  
 any other provision of law,

Plaintiff prays for damages as follows:

A. Statutory damages of \$2,000 as to Defendant AEX, pursuant to Cal. Civ. Code §§  
 1788.30(b) and 15 U.S.C. § 1692k;

B. Statutory damages of \$2,000 as to Defendant Nationwide, pursuant to Cal. Civ.  
 Code § 1788.30(b) and 15 U.S.C. § 1692k;

C. Statutory damages of \$6,000 as to the Doe Defendants, each to pay its



1 proportionate share; and

2 D. Reasonable attorney's fees and costs, pursuant to Cal. Civ. Code § 1788.30 and 15  
3 U.S.C. § 1692k(a)(3).

4  
5 Dated: 4/17/08

/s/  
\_\_\_\_\_  
Irving L. Berg  
THE BERG LAW GROUP  
145 Town Center, PMB 493  
Corte Madera, California 94925  
(415) 924-0742  
(415) 891-8208 (Fax)

9 ATTORNEYS FOR PLAINTIFF

10  
11 **JURY DEMAND**

12 Plaintiff demands trial by jury.

13  
14 Dated: 4/17/08

/s/  
\_\_\_\_\_  
Irving L. Berg



**EXHIBIT A**

THE BERG LAW GROUP  
ATTORNEYS AND COUNSELORS AT LAW  
145 Town Center, PMB 493  
Corte Madera, California 94925  
Phone: (415) 924-0742 Fax: (415) 891-8208  
e-mail irvberg@comcast.net

IRVING L. BERG, ESQ.

October 24, 2007

American Express  
Customer Service  
P. O. Box 961535  
El Paso, TX 79998-1535

Re: *Nellie C. Petalver*  
Social Security No.: 609-12-8790  
Alleged Creditor: GE Capital Retail Card

**Notice of Attorney Representation and  
Notice of Dispute**

Dear Sir or Madam:

The captioned consumer is a client of mine. All communications concerning my client's financial affairs, including the captioned debt, and any other debts you claim are owed by my client, shall hereafter be made to this office in writing. My office responds only to written communication sent via the United States Postal Service. We do not respond to telephone calls, email, or fax transmissions. In the unlikely event that the legal relationship with my client is terminated, you will be notified in writing.

My client's Social Security number is noted above. Should you have any question regarding the identification of my client, send your inquiry in writing to the undersigned. Only written inquiries will be acknowledged.

The alleged debts are disputed. Provide verification.

Your collection practices are governed by Federal and California consumer laws. If you have any doubt as to these matters, deliver this letter to your attorney or insurance carrier. **The law prohibits you from contacting my client, my client's employer, or my client's family regarding the alleged debts. All inquiries regarding my client's financial affairs shall be directed to the undersigned, in writing.**

Further, please note that, should a legal action be brought in connection with your collection practices, that legal action could result in a judgment that would include actual costs of filing the complaint, actual costs of service of process, and reasonable attorney's fees.

Sincerely,

Irving L. Berg  
ILB/rl

**EXHIBIT B**

**NATIONWIDE CREDIT, INC.**

2015 VAUGHN RD NW, BLD 400, KENNESAW GA 30144-7801  
1-866-479-7925

02/01/2008

RE: AMERICAN EXP TRAVEL RELATED SERV CO INC, 371517574091009  
BAL: \$7,369.52

Your delay in resolving this account has left you with just two options to avoid additional efforts to collect:

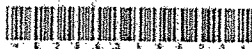
- Pay the full balance at once. To be sure of proper credit, make your payment payable to AMERICAN EXP TRAVEL RELATED SERV CO INC.
- If you can't pay in full now, call us to make acceptable arrangements. We've offered to work with you to seek terms that fit your individual situation. So we can resolve this matter together, please let us assist you now.

This matter is not going away by itself. Pay in full immediately or call us for help today, toll free at 1-866-479-7925.

The total account balance as of the date of this letter is shown above. Your account balance may increase due to interest or other charges, if so provided in your agreement with your creditor.

**PERSONAL AND CONFIDENTIAL**

PO BOX 740640  
ATLANTA GA 30374-0640



FOR PROPER CREDIT TO YOUR ACCOUNT RETURN THIS STUB IN THE ENCLOSED ENVELOPE WITH YOUR CHECK OR MONEY ORDER. BE SURE THAT OUR NAME AND ADDRESS APPEARS IN THE WINDOW.  
023/A02/072/02/01/2008

813

\*07365114912\*  
NELLIE PETALVER  
737 FOLSOM ST APT 505  
SAN FRANCISCO CA 94107-1264

A02

**PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION**

RE:	AMERICAN EXP TRAVEL RELATED SERV CO INC 02101601D	
ID NUMBER:	07365114912	
ACCOUNT NO:	371517574091009	
BALANCE DUE:	\$7,369.52	
AMOUNT ENCLOSED:	\$	

☐ Change of address: Print New Address on Back

NATIONWIDE CREDIT, INC.  
PO BOX 740640  
ATLANTA GA 30374-0640



01 07365114912 8

**EXHIBIT C**

**NATIONWIDE CREDIT, INC.**

2015 VAUGHN RD NW, BLD 400, KENNESAW GA 30144-7801  
1-866-479-7925

02/20/2008

RE: AMERICAN EXP TRAVEL RELATED SERV CO INC, 371517574091009  
BAL: \$7,404.52

**TAKE YOUR CHOICE OF SPECIAL PAYMENT TERMS**

We sincerely want to help you put the worry and obligation of this debt behind you. To assist you, we are offering you your choice of any of the payment options shown below:

- \_\_\_\_\_ One payment this month for the full amount.  
\_\_\_\_\_ Two payments – ½ this month, and ½ next month.  
\_\_\_\_\_ 3 payments – ⅓ this month, ⅓ next month and ⅓ the following month.  
\_\_\_\_\_ One-half down now and the balance in 5 equal monthly payments.

Just check the option that you choose. Then include with your first payment both the stub below and this page showing your checked choice. Please be sure that our address on the stub shows through the envelope window. And to ensure proper credit, make your payment payable to AMERICAN EXP TRAVEL RELATED SERV CO INC.

Please don't delay. That could cause your account balance to increase because of interest or other charges, if so provided in your agreement with your creditor.

If you have questions about these options, or wish to discuss other arrangements, call us. You can reach us toll free at 1-866-479-7925. Just be sure to pay or call now.

The total account balance as of the date of this letter is shown above. Your account balance may increase due to interest or other charges, if so provided in your agreement with your creditor.

**PERSONAL AND CONFIDENTIAL**

PO BOX 740640  
ATLANTA GA 30374-0640



FOR PROPER CREDIT TO YOUR ACCOUNT RETURN THIS STUB IN THE  
ENCLOSED ENVELOPE WITH YOUR CHECK OR MONEY ORDER. BE SURE  
THAT OUR NAME AND ADDRESS APPEARS IN THE WINDOW.  
023/A14/072/02/20/2008

3530



\*07365114912\*  
NELLIE PETALVER  
737 FOLSOM ST APT 505  
SAN FRANCISCO CA 94107-1264

A14

NATIONWIDE CREDIT, INC.  
PO BOX 740640  
ATLANTA GA 30374-0640

**PLEASE SEE REVERSE SIDE FOR  
IMPORTANT INFORMATION**

RE:	AMERICAN EXP TRAVEL RELATED SERV CO INC 02101601D	
ID NUMBER:	07365114912	
ACCOUNT NO:	371517574091009	
BALANCE DUE:	\$7,404.52	
AMOUNT ENCLOSED:	\$	

☐ Change of address: Print New Address on Back

01 07365114912 8